

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN DISTRICT OF OHIO**
3 **EASTERN DIVISION**

4 Corey Sipkin,

5 Plaintiff,

6 v.

7 DFS Karma, LLC,

8 Defendant.
9)

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

10 Plaintiff Corey Sipkin (“*Plaintiff*”), by and through its undersigned counsel, for its
11 Complaint against Defendant DFS Karma, LLC (“*Defendant*”) states and alleges as follows:

12 **INTRODUCTION**

13 1. This action seeks to recover damages for copyright infringement and the violation
14 of the DMCA for the removal of copyright management information.

15 2. Plaintiff herein creates photographic images and owns the rights to these images
16 which Plaintiff licenses for various uses including online and print publications.

17 3. Defendant owns and operates a website known as betkarma.com (the “*Website*”).

18 4. Defendant, without permission or authorization from Plaintiff actively copied,
19 stored, and/or displayed Plaintiff’s Photograph on the Website and engaged in this misconduct
20 knowingly and in violation of the United States copyright laws.
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22 **PARTIES**

23 5. Plaintiff Corey Sipkin is an individual who is a citizen of the State of New York
24 and who resides in Kings County, New York.

25 6. Upon information and belief, Defendant DFS Karma, LLC, is an Ohio limited
26 liability company with a principal place of business in Cleveland, Ohio and is liable and
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1 responsible to Plaintiff based on the facts herein alleged.

2 **JURISDICTION AND VENUE**

3 7. This Court has subject matter jurisdiction over the federal copyright infringement
4 claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

5 8. This Court has personal jurisdiction over DFS Karma, LLC because it maintains its
6 principal place of business in Ohio.

7 9. Venue is proper under 28 U.S.C. §1391(a)(2) because DFS Karma, LLC does
8 business in this Judicial District and/or because a substantial part of the events or omissions giving
9 rise to the claim occurred in this Judicial District.

10 **FACTS COMMON TO ALL CLAIMS**

11 10. Plaintiff is a professional photographer by trade who is the legal and rightful owners
12 of photographs which Plaintiff licenses to online and print publications.

13 11. Plaintiff has invested significant time and money in building Plaintiff's photograph
14 portfolio.

15 12. Plaintiff has obtained active and valid copyright registrations from the United States
16 Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others
17 are the subject of pending copyright applications.

18 13. Plaintiff's photographs are original, creative works in which Plaintiff owns
19 protectable copyright interests.

20 14. Upon information and belief, DFS Karma, LLC is the registered owner of the
21 Website and is responsible for its content.

22 15. Upon information and belief, DFS Karma, LLC is the operator of the Website and
23 is responsible for its content.

24 16. The Website is a popular and lucrative commercial enterprise.

25 17. The Website is monetized in that it provides subscription services to the public and,
26 upon information and belief, Defendant profits from these activities.

27 18. The Website is monetized in that it offers gambling analytics to the public and,
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1 upon information and belief, Defendant profits from these activities.

2 19. On March 13, 2021, Plaintiff authored a photograph of Major League Baseball
3 (MLB) pitcher, Joey Lucchesi (the “*Photograph*”). A copy of the Photograph is attached hereto as
4 Exhibit 1.

5 20. Plaintiff applied to the USCO to register the Photograph on or about March 24,
6 2021 under Application No. 1-10296772378.

7 21. The Photograph was registered by USCO on March 24, 2021 under Registration
8 No. VA 2-248-198.

9 22. On April 11, 2022, Plaintiff first observed the Photograph on the Website in a story
10 dated April 22, 2021. A copy of the screengrab of the Website including the Photograph is attached
11 hereto as Exhibit 2.

12 23. The Photograph was displayed at URL: [https://betkarma.com/article/730/mlb-](https://betkarma.com/article/730/mlb-trends-and-line-movement-4-22)
13 [trends-and-line-movement-4-22](https://betkarma.com/article/730/mlb-trends-and-line-movement-4-22).

14 24. The Photograph was stored at URL: [https://assets-](https://assets-betkarma.s3.amazonaws.com/Joey_Lucchesi.jpg)
15 [betkarma.s3.amazonaws.com/Joey_Lucchesi.jpg](https://assets-betkarma.s3.amazonaws.com/Joey_Lucchesi.jpg).

16 25. Without permission or authorization from Plaintiff, Defendant volitionally selected,
17 copied, stored and/or displayed Plaintiff’s copyright protected Photograph as is set forth in Exhibit
18 “1” on the Website.

19 26. Upon information and belief, the Photograph was copied, stored and displayed
20 without license or permission, thereby infringing on Plaintiff’s copyrights (hereinafter the
21 “*Infringement*”).

22 27. The Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed
23 tangible medium of expression that was sufficiently permanent or stable to permit it to be
24 communicated for a period of more than a transitory duration and therefore constitutes a specific
25 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th
26 Cir. 2007).

27 28. The Infringement is an exact copy of the vast majority of Plaintiff’s original image
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1 that was directly copied and stored by Defendant on the Website.

2 29. Upon information and belief, Defendant takes an active and pervasive role in the
3 content posted on its Website, including, but not limited to copying, posting, selecting,
4 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

5 30. Upon information and belief, Defendant directly contributes to the content posted
6 on the Website by, inter alia, directly employing reporters, authors and editors as its agents,
7 including but not limited to Justin Bales whereby Defendant's Website lists him as an "Author"
8 and who provides content to Defendant's other online mediums as an "All Sports Analyst"
9 (*"Employees"*).

10 31. Upon information and belief, at all material times the Employees were acting within
11 the course and scope of their employment when they posted the Infringement.

12 32. Upon information and belief, at all material times the Employees were acting within
13 the course and scope of their agency when they posted the Infringement.

14 33. Upon information and belief, the Photograph was willfully and volitionally posted
15 to the Website by Defendant.

16 34. Upon information and belief, Defendant engaged in the Infringement knowingly
17 and in violation of applicable United States Copyright Laws.

18 35. Upon information and belief, Defendant has the legal right and ability to control
19 and limit the infringing activities on its Website and exercised and/or had the right and ability to
20 exercise such right.

21 36. Upon information and belief, Defendant monitors the content on its Website.

22 37. Upon information and belief, Defendant has received a financial benefit directly
23 attributable to the Infringement.

24 38. Upon information and belief, the Infringement increased traffic to the Website and,
25 in turn, caused Defendant to realize an increase in the revenues generated via its subscription
26 services and/or gambling analytic services.

27 39. Upon information and belief, a large number of people have viewed the unlawful
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1 copies of the Photograph on the Website.

2 40. Upon information and belief, Defendant at all times had the ability to stop the
3 reproduction and display of Plaintiff's copyrighted material.

4 41. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential
5 market for the Photograph.

6 42. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

7 **FIRST COUNT**

8 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

9 43. Plaintiff repeats and incorporates by reference the allegations contained in the
10 preceding paragraphs, as though set forth in full herein.

11 44. The Photograph is an original, creative work in which Plaintiff owns valid
12 copyright properly registered with the United States Copyright Office.

13 45. Plaintiff has not licensed Defendant the right to use the Photograph in any manner,
14 nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

15 46. Without permission or authorization from Plaintiff and in willful violation of
16 Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored,
17 reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby
18 violating one of Plaintiff's exclusive rights in its copyrights.

19 47. Defendant's reproduction of the Photograph and display of the Photograph
20 constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service Co.,*
21 *Inc.*, 499 U.S. 340, 361 (1991).

22 48. Plaintiff is informed and believes and thereon alleges that the Defendant willfully
23 infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that
24 they used, published, communicated, posted, publicized, and otherwise held out to the public for
25 commercial benefit, the original and unique Photograph of the Plaintiff without Plaintiff's consent
26 or authority, by using it in the infringing article on the Website.

27 49. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled
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1 to an award of actual damages and disgorgement of all of Defendant's profits attributable to the
 2 infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at
 3 Plaintiff's election, an award for statutory damages against Defendant for each infringement
 4 pursuant to 17 U.S.C. § 504(c).

5 50. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in
 6 its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs
 7 pursuant to 17 U.S.C. § 505 from Defendant.

8 51. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled
 9 to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

10 **SECOND COUNT**

11 ***(Falsification, Removal and Alteration of Copyright Management 12 Information 17 U.S.C. § 1202)***

13 52. Plaintiff repeats and incorporates, as though fully set forth herein, each and every
 14 allegation contained in the preceding paragraphs, as though set forth in full herein.

15 53. Upon information and belief, Defendant knew that Plaintiff created and held rights
 16 to the Photograph because, *inter alia*, the source of the Photograph that Defendant used to make
 17 its infringing copy specifically attributed the Photograph to Plaintiff by watermark or photo credit.

18 54. Upon information and belief, in its article on the Website, Defendant copied the
 19 Photograph from <https://nypost.com/2021/03/13/mets-joey-lucchesi-uses-special-pitch-to-make-rotation-case/> which contained a photograph credit located beneath the Photograph stating "Corey Sipkin," the owner and author of the Photograph ("*Original Source*"). A copy of a screenshot of
 20 the Original Source page is attached hereto as Exhibit 3.

21 55. The photograph credit is copyright management information.

22 56. Upon information and belief, Defendant intentionally removed copyright
 23 management information related to the Photograph with the intent to induce, enable, facilitate, or
 24 conceal an infringement of Plaintiff's rights under the Copyright Act. Specifically, Defendant
 25 purposefully failed to include the photo credit originally conveyed with the Photograph in order to
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1 mislead the public into believing that Defendant either owned the Photograph or had legitimately
2 licensed it for use in the Infringement.

3 57. In addition, Defendant displayed the unauthorized copies of the Photograph
4 knowing the copyright management information had been removed.

5 58. Defendant's conduct violates 17 U.S.C. § 1202(a) and 1202(b).

6 59. Upon information and belief, Defendant's falsification, removal and/or alteration of
7 the aforementioned copyright management information was made without the knowledge or
8 consent of Plaintiff.

9 60. Upon information and belief, the falsification, alteration and/or removal of said
10 copyright management information was made by Defendant intentionally, knowingly and with the
11 intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the
12 Photograph. Defendant also knew, or should have known, that such falsification, alteration and/or
13 removal of said copyright management information would induce, enable, facilitate, or conceal
14 their infringement of Plaintiff's copyright in the Photograph.

15 61. Plaintiff has sustained significant injury and monetary damages as a result of
16 Defendant's wrongful acts as hereinabove alleged, and as a result of being involuntarily associated
17 with Defendant in an amount to be proven.

18 62. As a result of Defendant's violations of Title 17 of the U.S. Code, pursuant to 17
19 U.S.C. § 1203(c)(2), Plaintiff is entitled to an award of the actual damages suffered as a result of
20 the violation including any profits of the Defendant attributable to the violation or, alternatively,
21 Plaintiff may elect to recover from Defendant statutory damages pursuant to 17 U.S.C. §
22 1203(c)(3) for each violation of 17 U.S.C. § 1202.

23 63. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in
24 its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs
25 pursuant to 17 U.S.C. § 1203(b)(4) and (5) from Defendant.

26 **JURY DEMAND**

27 64. Plaintiff hereby demands a trial of this action by jury.
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PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendant infringed upon Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre-judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

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